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**Attorney For Counter-Defendant**  
**Manuel D. Martinez**

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT CALIFORNIA  
 SAN FRANCISCO DIVISION

STEVEN A. GRAY,  
 Plaintiff,  
 vs.  
 UNITED STATES OF AMERICA; and  
 DOES 1 through 30, inclusive.

Defendant.  
 UNITED STATES OF AMERICA,  
 Counter-Claimant,  
 vs.  
 MANUEL MARTINEZ and STEVEN A.  
 GRAY

Counter-Defendants

Case No. CV 11-0680 SC

**STIPULATION & ~~PROPOSED~~  
 ORDER TO CONTINUE PRETRIAL  
 AND TRIAL DEADLINES**

Case filed: February 15, 2011

IT IS HEREBY STIPULATED by and between Plaintiff/ Counter-Defendant STEVEN A. GRAY (sometimes hereinafter "Plaintiff GRAY"), Defendant/Counter-Claimant UNITED STATES OF AMERICA (sometimes hereinafter "Defendant USA"), and Counter-Defendant MANUEL D. MARTINEZ (sometimes hereinafter "Counter-Defendant MARTINEZ") by and through their attorneys of record, that GOOD CAUSE exists and the parties request that the Court continue the pretrial and trial deadlines based on the following:

1. The suit involves liability for the Trust Fund Recovery Penalty for quarters ending March 31, 2007, September 30, 2007, December 31, 2007, March 31, 2008, and June 2008 as to federal employment taxes owed by Ace Roofing, Inc., a California corporation owned by Manuel Martinez.

2. Plaintiff/ Counter-Defendant GRAY disputes allegations that he was a responsible officer of Ace Roofing, Inc. and allegations that he willfully failed to collect, account for or turn over withholding and F.I.C.A. taxes with respect to Ace Roofing's employees for said periods. Mr. GRAY asserts that he was not a "Responsible Person" nor was he "Willful" within the meaning of 26 U.S.C § 6672 and the applicable court cases there under, nor under any other federal law provision. Counter-Defendant MARTINEZ seeks a determination that he is not liable as a "responsible person" under the Internal Revenue Code Section 6672 for payment of taxes or penalties owed by Ace Roofing, Inc.

3. Plaintiff GRAY has filed a *Certification of Interested Entities or Persons* as follows:

Name	Connection or Interest
ACE ROOFING, INC., a California corporation Agent For Service Process – Manuel D. Martinez	Principal debtor failing to tender federal employment taxes due to Defendant United States of America
MANUEL D. MARTINEZ 9065 Lakewood Drive Windsor, CA 95492	Principal debtor failing to tender federal employment taxes due to Defendant United States of America
MADELINE M. MARTINEZ 9065 Lakewood Drive Windsor, CA 95492	Spouse of Principal debtor failing to tender federal employment taxes due to Defendant United States of America and transferee of assets belonging to MANUEL MARTINEZ AND ACE ROOFING, INC.

4. Counter-Defendant MARTINEZ has filed a *Certification of Interested Entities or Persons* as follows:

Name	Interest
ACE ROOFING, INC., a California corporation	Principal liable for underlying tax.
MADELINE M. MARTINEZ 9065 Lakewood Drive Windsor, CA 95492	Spouse MANUEL MARTINEZ

5. Pursuant to Federal Rule of Civil Procedure 16(b)(4), good cause exist for the Court to modify the July 22, 2011 *Status Conference Order Setting Times For Compliance With Certain Rules of Court*.

6. At the time of the Initial Status Conference, the parties were engaged in settlement negotiations and expected that this matter would be resolved via settlement. Such expectation was disclosed on the record to the Honorable Judge Conti.

7. Although the parties agreed to early neutral evaluation in the joint case management statement filed herein on July 12, 2011, no mediation or other alternative dispute resolution orders have been issued. On July 22, 2011, expedited trial and trial related deadlines were set based on the Court's and the named parties' settlement expectations and belief that this case could be handled on an expedited basis with streamlined procedures assuming availability of pertinent IRS officers and employees for deposition and other discovery responses.

8. Settlement: Settlement negotiations have stalled and the parties have resumed the discovery process. This case can no longer be handled on an expedited basis with streamlined procedures for additional reasons discussed herein above and below. The expected length of trial in this matter is four (4) days.

9. Joinder of Parties & Amendment To Pleadings: Plaintiff contends that not all necessary and indispensable parties have been joined.<sup>1</sup>

10. Counter-Defendant MANUEL MARTINEZ did not appear in the above captioned

<sup>1</sup> Internal Revenue Code Section 3505 provides for the liability of third parties paying or providing for wages. See also Plaintiff Gray's Complaint 5:19-9:22.

1 matter until June 20, 2011 and the expedited calendar does not provide sufficient time to prepare  
2 for trial.

3 11. Early Neutral Evaluation Request: Plaintiff requests referral to mediation in these  
4 matters.

5 12. The parties are mindful of and respectful of the Court's July 22, 2011 *Status*  
6 *Conference Order Setting Times For Compliance With Certain Rules of Court* ("Status  
7 Conference Order") but continuing the discovery cut-off and pretrial deadlines is necessary for  
8 effective completion of discovery, participation in early neutral evaluation, and preparation for  
9 trial.

10 13. Based on the foregoing, the parties respectfully request that this Court 1) modify its  
11 July 22, 2011 Status Conference Order, 2) continue the current discovery cut-off and all pre-trial  
12 and trial related dates for at least ninety (90) days including but not limited to the dates requested  
13 below, and 3) issue an order directing the parties to mediation:

	Current Deadline	Proposed Deadline
<b>Discovery Cut-Off</b>	October 5, 2011	January 4, 2012
<b>Motion Hearing Cut-Off</b>	October 21, 2011	January 20, 2012
<b>Pre-Trial Conference</b>	November 29, 2011	February 28, 2012
<b>Trial</b>	December 5, 2011	March 5, 2012

18 Dated: September 2, 2011

The McGary Firm

19 By: /s/ Andrea D. McGary  
20 Andrea D. McGary, Esq.

21 Attorneys for Plaintiff/Counter-Defendant  
22 STEVEN A. GRAY

23 Dated: September 2, 2011

United States Attorney Office,  
24 Tax Division

25 By: /s/ Blake Stamm  
26 Blake Stamm  
27 Assistant United States Attorney  
28 Tax Division

Attorneys for Defendant/Counter-Claimant  
UNITED STATES OF AMERICA

1 Dated: September 2, 2011

Jeffrey A. Titus, Attorney At Law

2  
3 By: /s/ Jeffrey A. Titus  
4 Jeffrey A. Titus, Esq.

5 Attorneys for Counter-Defendant  
6 MANUEL D. MARTINEZ  
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**ORDER**

Upon consideration of the parties' *Stipulation And [Proposed] Order To Continue Pretrial And Trial Deadlines*, and good cause appearing therefor,

IT IS HEREBY ORDERED that the pretrial and trial deadlines be continued as follows:

	<b>Previous Deadline</b>	<b>Revised Deadline</b>
<b>Mediation/Early Neutral Evaluation</b>		
<b>Discovery Cut-Off</b>	October 5, 2011	January 5, 2012
<b>Motion Hearing Cut-Off</b>	October 21, 2011	January 13, 2012
<b>Pre-Trial Conference</b>	November 29, 2011	February 24, 2012
<b>Trial</b>	December 5, 2011	March 5, 2012

IT IS SO ORDERED.

Dated: September 8, 2011

